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SUPPORTING STATEMENT

A. Justification:

The Commission is seeking an extension for existing collection 3060-0411 which relates to the filing requirements of formal complaint proceedings with the Federal Communications Commission. Contained within this renewal are adjustments that significantly reduce collection hours. After reviewing these requirements, our collection data has been adjusted downward. We removed hours associated with docketed adjudicatory hearings which occur *after* the filing of a complaint and the intake process, because those aspects of our hearing process are exempt from PRA requirements.¹ Accordingly, the filed estimates reflect hours and costs needed to file a complaint *prior* to the assignment of a hearing docket number. In addition, several rules were renumbered to reflect an order issued in 2018 which consolidated some rule requirements within this collection.

Existing Information Collection Requirements:

1. Sections 206-209 of the Communications Act of 1934, as amended (the “Act”), provide the statutory framework for adjudicating formal complaints against common carriers. To resolve complaints between providers regarding compliance with data roaming obligations, Commission Rule 20.12(e) adopts by reference the procedures already in place for resolving Section 208 formal complaints against common carriers, except that the remedy of damages, is not available for complaints against commercial mobile data service providers. Section 208(a) authorizes complaints by any person “complaining of anything done or omitted to be done by any common carrier” subject to the provisions of the Act.

A. Formal Complaint Proceedings

Formal complaint proceedings before the Commission are akin to civil litigation in federal district court. In fact, under section 207 of the Act, a party claiming to be damaged by a common carrier may file its complaint with the Commission or in any district court of the United States, “but such person shall not have the right to pursue both such remedies.” See 47 U.S.C. § 207.

Certain categories of complaints are subject to a statutory deadline for resolution. See, e.g., 47 U.S.C. § 208(b)(1) (imposing a five-month deadline for complaints challenging the “lawfulness of a charge, classification, regulation, or practice”); 47 U.S.C. § 271(d)(6) (imposing a 90-day deadline for complaints alleging that a Bell operating company has ceased to meet conditions imposed in connection with approval to provide in-region interLATA services).

The Commission has promulgated rules (the “Formal Complaint Rules”) to govern its formal complaint proceedings that are similar in many respects to the Federal Rules of Civil Procedure. See 47 C.F.R. §§ 1.720-1.740. These rules require the submission of information from the parties necessary to create a record on which the Commission can decide complex legal and factual issues. Once a private party has filed a complaint, it is reviewed for conformance with the Formal Complaint Rules and receives a docket number for adjudication if the filing is conforming. See 47 C.F.R. §§ 1.721 (s), 1.722. In 2014, the Commission required that all formal complaint submissions, unless confidential, must be filed using the agency’s Electronic Comment Filing System.

¹ 44 U.S.C. § 3518(c); 5 CFR § 1320.4.

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As described in Section 1.721 of the Commission’s rules, formal complaint proceedings are resolved on a written record consisting first of a complaint which once accepted as a docketed hearing is followed by an answer, a joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments. *See* 47 C.F.R. § 1.721.

Specifically, the Commission’s Formal Complaint Rules mandate collection of the following information:

- General pleading requirements:
 - ✓ Parties are required to submit copies of all non-Commission authorities relied upon that are not routinely available in national reporting systems. 47 C.F.R. § 1.721 (g).
 - ✓ Parties must submit copies of relevant tariffs or relevant portions of tariffs that are referred to or relied upon in their pleadings. 47 C.F.R. § 1.721 (i).
- Complaint:
 - ✓ All material facts in the complaint must be supported by relevant affidavits and documentation, and the documentary evidence upon which the complainant relies to support its facts and arguments must be attached to the complaint. 47 C.F.R. §§ 1.721 (d), (g).
 - ✓ The complaint must specify the relief sought and, for complaints against common carriers, the amount of damages claimed, if known. 47 C.F.R. § 1.721 (b).
 - ✓ The complainant must certify that prior to filing the complaint, the complainant mailed to the defendant (or its registered agent for service of process) a certified letter outlining the allegations that form the basis of the complaint it anticipates filing with the Commission and inviting a response within a reasonable period of time. 47 C.F.R. § 1.722 (g).
 - ✓ The complaint must include an information designation identifying witnesses with knowledge of facts alleged and describing all relevant documents. 47 C.F.R. § 1.722 (i).
 - ✓ An FCC Form 485, Formal Complaint Intake Form, must accompany the complaint. 47 C.F.R. § 1.722 (j). The Form indicates, among other things, that the complaint follows the procedural and substantive requirements under the Act and the Commission’s rules.
 - ✓ If a complainant wishes to recover damages, the complaint must contain a clear and unequivocal request for damages. 47 C.F.R. § 1.723 (d). Either the complaint or a subsequent supplemental complaint for damages must contain either a computation of damages, along with an identification of relevant supporting evidence, or an explanation of why such evidence is not then available. 47 C.F.R. § 1.723 (b), (c), and (e). As noted above, the remedy of damages is not available for complaints against commercial mobile data service providers; accordingly, these provisions are excluded from the formal complaint process in the case of such complaints.

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B. Accelerated Docket Proceedings:

- ✓ Parties to formal complaint proceedings may request that their dispute be included on the Commission's Accelerated Docket ("AD"). Many, but not all, of the requirements outlined above apply to AD proceedings (albeit with shorter pleading deadlines), and certain other procedural rules (discussed below) apply that do not apply to other formal complaint proceedings. 47 C.F.R. § 1.736 (a).
- ✓ Any party that contemplates filing a formal complaint and wishes to have the complaint included on the AD must transmit a request so stating, by phone or in writing, to the Chief of the Enforcement Bureau's Market Disputes Resolution Division. 47 C.F.R. § 1.730 (b). A defendant to a complaint proceeding may request in writing inclusion of the proceeding on the AD. 47 C.F.R. § 1.736 (b).

C. Further Information Privacy Act

The information collection requirements described above may affect individuals or households. As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and OMB regulations, M-03-22 (September 22, 2003), the FCC has completed both a system of records, FCC/EB-5, "Enforcement Bureau Activity Tracking System," and is drafting an update to the existing Privacy Impact Assessment (PIA), that cover the collection, maintenance, use, and disposal of all personally identifiable information PII that may be submitted as part of a formal complaint:

- (1) The system of records notice (SORN), FCC/EB-5, "Enforcement Bureau Activity Tracking System (EBATS)," was published in the *Federal Register* on December 14, 2010 (75 FR 77872) and became effective on January 24, 2011. It is posted on the FCC's Privacy Act webpage at: <http://www.fcc.gov/omd/privacyact/records-systems.html>.
- (2) The initial Privacy Impact Assessment (PIA) was completed on May 22, 2009. Subsequent related approvals include: (1) FCC/EB-5, "EBATS," on January 24, 2011: and, (2) September 21, 2017 was updated.

Statutory authority for this information collection is contained in 47 U.S.C. §§ 151, 154(i), 154(j), 206, 207, 208, 209, 301, 303, 304, 309, 316, 332, and 1302.

2. The Commission uses the information detailed in the Justification to determine the sufficiency of complaints and to resolve the merits of disputes between parties. Orders issued by the Commission in formal complaint proceedings are based upon evidence and argument produced by the parties in accordance with the Formal Complaint Rules. If the information were not collected, the Commission 9f), 1.735 (b), and in addition, hard copies must be provided to the staff of the Market Disputes Resolution Division of the Enforcement Bureau upon request. Parties may serve certain documents on each other by hand, overnight delivery, and email (47 C.F.R. § 1.734 (f)). Additionally, the FCC Form 485 is posted on the FCC website for downloading and printing or, completion of this form can be done electronically when done in concert with the agency's fee payment system, Fee Filer.

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3. The Formal Complaint Rules require that all formal complaint submissions, unless confidential, be filed using the Commission's Electronic Comment Filing System (47 C.F.R. §§ 1.731 (a)(2), 1.734 (f), 1.735 (b). and in addition, hard copies must be provided to the staff of the Market Disputes Resolution Division of the Enforcement Bureau upon request. Parties may serve certain documents on each other by hand, overnight delivery, and email (47 C.F.R. § 1.734 (f). Additionally, the FCC Form 485 is posted on the FCC website for downloading and printing or, completion of this form can be done electronically when done in concert with the agency's fee payment system, Fee Filer.
4. A complainant must state whether suit has been filed in any court or other government agency based on the same claim or set of facts, or whether the complaint seeks prospective relief identical to the relief proposed or at issue in another proceeding before the Commission. 47 C.F.R. § 1.722 (h) Thus, the Commission attempts to identify duplication. If there are no duplicative proceedings, it is unlikely that information similar to the information that is obtained via the Formal Complaint Rules is already available. Each dispute involves individual parties and unique facts, and, as stated above, it is essential that the Commission develop an adequate legal and factual record in order to adjudicate disputes and, in the event of a meritorious complaint, determine appropriate remedies.
5. The Formal Complaint Rules require complainants and defendants to support factual allegations in their pleadings, through documentation and affidavits, and to identify individuals with knowledge, and describe all relevant documents early in the process. The Formal Complaint Rules seek to eliminate or reduce significantly the need for multiple rounds of discovery requests and protracted discovery disputes, thereby significantly reducing the burden on small business entities.
6. The Commission has no control over the frequency of complaints, which are filed within the sole discretion of a complaining party. The filing of complaints depends entirely upon the complainant's perception that it has a cause of action against a common carrier or a commercial mobile data service provider subject to the Communications Act of 1934, as amended. If the information were not collected, the Commission would not be able to resolve common carrier related complaint proceedings required by Section 208, or the complaints against commercial mobile data service providers that will be critically important to ensure compliance with the data roaming rule, 47 C.F.R. § 20.12 (e).
7. As detailed above, the Commission has established certain response times during the pleading cycle that are less than 30 days. These response times are necessary to the expeditious resolution of formal complaints (some of which are subject to statutory deadlines), and the response times are comparable to response times applicable to proceedings in federal district courts.
8. The Commission published a notice in the Federal Register initiating a 60-day comment period on August 18, 2023 (88 FR 56618). No comments were received as a result of this notice. A copy of the notice is included in this submission to the OMB.
9. No gifts or payments will be given to respondent for this collection.
10. The Formal Complaint Rules contain a process by which confidential treatment can be afforded for material that a party believes in good faith falls within an exemption to disclosure under the Freedom of Information Act. See 47 C.F.R. § 1.731. In addition, the Commission has both a SORN and PIA to cover any PII that may be submitted, as noted in Question 1.

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11. This collection may address personal matters of a sensitive nature such as PII. As noted in Question 1, the FCC has both a SORN and a PIA to cover this PII.
12. This collection accounts for formal complaints filed pursuant to Sections 1.720 *et seq.* We anticipate that two filing parties will generally be involved (the complainant and the defendant/responding party). Formal complaints entail adjudication of complaints between private parties: the FCC does not “investigate” these matters due to the nature of these disputes. These proceedings, as noted above, are akin to filing a lawsuit in federal court. The following represents the estimates of the hour burdens of the collections of information relating to formal complaint proceedings.

The Commission estimates that 3 formal complaints and related pleadings will be filed each year, including 3 separate FCC 485 forms with the filed complaints. In addition, the Commission estimates that perhaps as many as 3 requests for accelerated docket treatment of a formal complaint may be received.

These estimates are based on FCC staff’s knowledge and experience, as are the estimates of preparation times. With this collection renewal, these estimates reflect staff experience that on average there are three new formal complaint proceedings per year. This estimate is based on the past average over the prior few years which is a reduction possibly based on the pandemic.

We assume that the complainant/defendant will use contract attorneys in the preparation of most required documents.

Total Number of Respondents: 3
Total Number of Annual Responses: 9 filings
Total Annual Burden Hours: 227 (rounded up)
Total In-House Costs: \$4,465.50

The Commission estimates the following **burden hours for one proceeding**:

Filing or event	Complainant hours (In-House)	Complainant’s Contract Attorney	Total Hours (In-House & Contracted)
FCC 485	0.5	1	1.5
Complaint	8	60	68
Subtotal Non-AD			69.5
AD Hours			
Request for AD Treatment	1	5	6
Subtotal AD Hours			6
Total Hours Non-AD and AD Hours	9.50	66	76 ² (rounded up)

² 76 hours are for just one proceeding and the total annual burden hours are 277 hours.

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Annual Burden Hours (Combines In-House, Outside Counsel and Accelerated Docket Hours):

<u>Responses</u>	<u>Hours/Response</u>	<u>Total Hours</u>
3 FCC 485s filed	x 1.5 hour	= 4.5 hours
3 Complaints	x 68 hours	= 204 hours
3 Requests for AD Treatment	x 6 hours	= 18 hours

Total Responses: **9**

Total Annual Burden Hours: 227 (rounded up).

A. Total Annual In-House Counsel Cost Burdens

We estimate that in-house counsel will engage with outside counsel in the preparation of documents and positions. We estimate that the average hourly salary of an in-house counsel (including overhead) is \$93/hour. Effective March of 2023, the Commission implemented higher rates for formal complaints as a result of a cost study that reviewed the current costs to process and adjudicate these matters.

3 FCC Form 485 Filing Fee		x \$605	= \$1,815
3 FCC 485s filed	x 0.5 hours	x \$93/hour	= \$139.50
3 Complaints	x 8 hours	x \$93/hour	= \$2,232
Subtotal In-House Costs			= \$4,186.50
3 Requests for AD Treatment	x 1 hour	x \$93/hour	= \$279.00
Subtotal AD Treatment			= \$279.00

Total Annual In-House Counsel Cost Burden = \$ 4,465.50

13. Annual Cost Burden

A. Outside Counsel:

We assume that the complainant will use contract attorneys in the preparation of the required documents. It is estimated that a contract attorney will have an average hourly salary of \$300/hour which costs are reflected below.

A fee must be submitted with the filing of a formal complaint along with the FCC Form 485 (\$605 per application). 47 C.F.R. § 1.1106.

3 FCC Form 485 Filing Fee		x \$605	= \$1,815
3 FCC 485s filed	x 1 hour	x \$300/hour	= \$900
3 Complaints	x 60 hours	x \$300/hour	= \$54,000
Subtotal Outside Counsel Costs			= \$56,715
3 Requests for AD Treatment	x 5 hours	x \$300/hour	= \$4,500
Subtotal AD Treatment			= \$4,500

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Total Annual Outside Counsel Cost Burden = \$61,215

14. Cost to the Federal Government:

The Commission will use staff attorneys at the GS-15, Step 5 grade level (\$84.55/hour) to review the material submitted for each formal complaint proceeding. It is estimated that this staff attorney would spend approximately 48 hours in the review of 3 formal complaints overall. It is further estimated that this staff attorney would also spend approximately 24 hours reviewing the Request for AD Treatment.

3 Complaint Proceeding Filings	x \$84.55/hour x 48 hours =	\$12,175.20
3 Accelerated Docket Filings	x \$84.55/hour x 24 hours =	\$6,087.60
Total Cost to the Federal Government:		\$18,262.80

15. The Commission is reporting adjustments/decreases to this information collection. We estimate 3 respondents a year which produce an estimated 9 responses annually. The decreases to the total number of respondents and total annual responses resulted a reduction in the total annual burden hours. The total annual burden hours changed from 366 to 227 (-139).

Lastly, the cost of filing a formal complaint has increased by \$370 per filing which, as noted above, reflect an extensive cost study. There is not a separate filing associated with making a request to be placed on the FCC’s Accelerated Docket. These estimates reflect adjustments to this information collection from the last submission to OMB based on more recent staff experience. Although there was an increase in the filing fee, there was a decrease in the total annual cost from \$97,175 to \$61,215 (-\$35,960).

16. The data will not be published.

17. An extension of the waiver not to publish the expiration date on the FCC Form 485 is requested. The Commission will use an edition date in lieu of the OMB expiration date. This will obviate the need for the Commission to destroy existing stock of forms upon the expiration of the clearance. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. § 0.408.

18. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not employ any statistical methods.